Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

October Term, 1997

NORTH TEXAS STEEL COMPANY, INC.,

Petitioner,

vs.

R.R. DONNELLEY & SONS COMPANY,

Respondent.

On Petition For Writ Of Certiorari To The Court Of Appeals Of Indiana

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Due Process Clause of the Fourteenth Amendment of the United States Constitution permits an Indiana court to exercise personal jurisdiction over a Texas corporation which had no direct contacts with the State of Indiana other than the knowledge that a product, on which it performed fabrication services, was to be sold by a third party for use in the State of Indiana.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i
TABLE OF CONTENTS ii
TABLE OF AUTHORITIES iii
OPINIONS AND ORDERS BELOW 1
JURISDICTIONAL STATEMENT 1
RELEVANT CONSTITUTIONAL PROVISION 2
STATEMENT OF THE CASE 2
REASONS FOR GRANTING THE PETITION 12
CONCLUSION 22
APPENDIX A-1

TABLE OF AUTHORITIES

Page

CASES

Asahi Metal Industry Company, Ltd. v. Superior Court of California, Solano County, 480 U.S. 102, 107 S.Ct. 1026, 94 L.Ed.2d 92 (1987) ..... *passim*

A. Uberti and C. v. Leonardo, 892 P.2d 1354 (Ariz. 1995) 19

Barone v. Rich Bros. Interstate Display Fireworks Company, 25 F.2d 610 (8th Cir. 1994) 16

Burger King Corp. v. Rudzewicz, 471 U.S. 462, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985) 22

CMMC v. Salinas, 929 S.W.2d 435 (Tex. 1996) 19

Continental Research Corp. v. Reeves, 204 Ga. App. 120, 419 S.E.2d 48 (1992) 18

Cox v. Hazelock, Ltd., 105 N.C. App. 52, 411 S.E.2d 640 (1992) 18

Dehmlow v. Austin Fireworks, 963 F.2d 941 (7th Cir. 1992) 16

Dillaplain v. Lite Industries, Inc., 788 S.W.2d 530 (Mo. App. 1990) 18

Freemond v. Somma, 611 N.E.2d 684 (Ind. App. 1993) 3

Halderman v. Sanderson Forklift Co., Ltd., 818 S.W.2d 27 (Ky. App. 1991) 18

Hanson v. Denckla, 357 U.S. 235, 78 S.Ct. 1228, 2 L.Ed.2d 1283 (1958) 22

International Shoe Co. v. Washington, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945) 3

In Re Celotex Corp., 124 F.3d 619 (4th Cir. 1997) 16

TABLE OF AUTHORITIES – Continued

Page

Irving v. Owens Corning Fiberglass Corp., 864 F.3d 383 (5th Cir. 1989) 16

Johnson v. Peacock Lumber Co., Inc., 770 P.2d 690 (Ore. App. 1989) 18

Lesnick v. Hollingsworth & Vose Co., 35 F.3d 939 (4th Cir. 1994) 16

North Texas Steel Co. Inc. v. R.R. Donnelley & Sons Co., 679 N.E.2d 513 (Ind. App. 1997) 1, 6

Omeluk v. Langsten Slip and Batbyggeri A/S, 52 F.3d 267 (9th Cir. 1995) 17

Renner v. Lanard Toys Ltd., 33 F.3d 277 (3rd Cir. 1994) 17

Rodriguez v. Fullerton Tires Corp., 115 F.3d 81 (1st Cir. 1997) 16

Ruston Gas Turbines, Inc. v. Donaldson Co. Inc., 9 F.3d 415 (5th Cir. 1993) 16

Sawtelle v. Farrell, 70 F.3d 1381 (1st Cir. 1995) 16

Sorrells v. R&R Custom Coach Works, Inc., 636 So.2d 668 (Miss. 1994) 18

Vermeulen v. Renault USA, Inc., 985 F.2d 1534 (11th Cir. 1993) 17

Viam Corp. v. Iowa Export-Import Trading Co., 84 F.3d 424 (Fed. Cir. 1996) 17

Wiles v. Morita Iron Works Co. Ltd, 530 N.E.2d 1382 (Ill. 1988) 19

World-Wide Volkswagon Corp. v. Woodson, 444 U.S. 286, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980) 6, 12, 13, 16, 18

TABLE OF AUTHORITIES – Continued

Page

STATUTES AND RULES

U.S.C. § 1257(a) 7

Ind. App. Rule 4(B)(6) 1

Ind. App. Rule 11(B) 2

UNITED STATES CONSTITUTION

U.S. CONST. amend. XIV, § 1 2

OPINIONS AND ORDERS BELOW

The decision by the Court of Appeals of Indiana that gives rise to this Petition is published as *North Texas Steel Company, Inc. v. R.R. Donnelley & Sons Company*, 679 N.E.2d 513 (Ind. App. 1997), and is reprinted in the Appendix hereto at p. A-1. By Order dated December 3, 1997, the Supreme Court of Indiana denied Appellant's Petition for Transfer to that Court. This Order is reprinted in the Appendix hereto at p. A-17. The decision of the Court of Appeals of Indiana affirmed an Order of the Kosciusko Circuit Court, Cause No. 43C01-9512-CP-999, denying Petitioner's Motion to Dismiss for lack of personal jurisdiction. That Order is reprinted in the Appendix hereto at p. A-19.

JURISDICTIONAL STATEMENT

On May 10, 1996, the Kosciusko Circuit Court, Kosciusko County, Indiana, entered an Order denying Petitioner, North Texas Steel Company, Inc.'s (hereinafter "North Texas Steel") Motion to Dismiss for lack of personal jurisdiction. On August 2, 1996, the Kosciusko Circuit Court entered its Order certifying that Order for interlocutory appeal pursuant to Appellate Rule 4(B)(6) of the Indiana Rules of Appellate Procedure. On August 30, 1997, the Court of Appeals for Indiana granted North Texas Steel's Petition to Accept Jurisdiction of Interlocutory Appeal pursuant to Appellate Rule 4(B)(6) of the Indiana Rules of Appellate Procedure. On April 29, 1997, the Court of Appeals of Indiana entered its Opinion affirming the judgment of the Kosciusko Circuit Court.

North Texas Steel timely filed its Petition for Transfer to the Indiana Supreme Court pursuant to Rule 11 of the Indiana Rules of Appellate Procedure. On December 3, 1997, the Indiana Supreme Court denied North Texas Steel's Petition for Transfer pursuant to Appellate Rule 11(B) of the Indiana Rules of Appellate Procedure.

This Petition for Writ of Certiorari is being timely filed in accordance with Rule 13.1 of the Rules of the Supreme Court of the United States. This Court has jurisdiction pursuant to 28 U.S.C. §1257(a).

RELEVANT CONSTITUTIONAL PROVISION

The constitutional provision at issue in this case is U.S. CONST. amend. XIV, §1:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

This appeal arises from a property damage action filed by the respondent, R.R. Donnelley & Sons Company (hereinafter "R.R. Donnelley"), as a result of the collapse

of a storage rack system on which the petitioner, North Texas Steel, performed certain fabrication services. On December 18, 1995, R.R. Donnelley filed its Complaint and Demand for Jury Trial, asserting causes of action against North Texas Steel for negligence and breach of contract. Subsequently, R.R. Donnelley filed an Amended Complaint adding a claim for strict liability against North Texas Steel.

On January 26, 1996, North Texas Steel filed its Motion to Dismiss on the grounds of lack of personal jurisdiction. Specifically, North Texas Steel contended that it did not have sufficient minimum contacts to permit the exercise of personal jurisdiction by a court of the State of Indiana as required by the Due Process Clause of the Fourteenth Amendment to the United States Constitution. (Defendant North Texas Steel Company, Inc.'s Motion to Dismiss, p. 1, Record, p. 48; Memorandum of Law in Support of Defendant, North Texas Steel's Motion to Dismiss, pp. 6-22; Record, pp. 56-72).

> "It is axiomatic that an Indiana Court must have personal jurisdiction over a defendant in order to render a valid personal judgment against that defendant. *Freemond v. Somma*, (Ind. App. 1993), 611 N.E.2d 684, 687. Sufficient 'minimal contacts' must exist between the forum state and the non-resident defendant 'to make it reasonable and just, according to our traditional conception of fair play and substantial justice' to permit a forum state to exercise personal jurisdiction over the non-residential defendant. *International Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S.Ct. 154, 90 L.Ed. 95, (1945). In the present case, it is clear that North Texas Steel has no contacts with the State of Indiana, much

> less the minimum contacts required by the Fourteenth Amendment." (Record, pp. 56-57).

On May 10, 1996, the Kosciusko Circuit Court denied North Texas Steel's Motion to Dismiss. (May 10, 1996 Order of the Court re: Motion to Dismiss, Record, pp. 468-469; A-19-A-20). In denying the Motion to Dismiss, the Kosciusko Circuit Court specifically found that North Texas Steel had sufficient contacts with the State of Indiana to justify the imposition of personal jurisdiction.

> "The Court believes that, in weighing the contacts of North Texas Steel with the State of Indiana, its business practice has fairly submitted it to the jurisdiction of the Courts of Indiana. All of the evidence indicates that North Texas Steel performed all of its services within the State of Texas but that in so doing, it was specifically preparing an item which it knew to be solely for shipment to R.R. Donnelley at Warsaw, IN. Because the item was prepared with knowledge of its specific purpose for shipment to and usage within the State of Indiana, the Court believes that it is proper to consider the issues of the product's alleged failure in Indiana Courts." (Order, p. 1; Record, p. 468, A-19-A-20).

In its appeal to the Indiana Court of Appeals from the denial of its Motion to Dismiss for lack of personal jurisdiction, North Texas Steel once again raised the issue of whether North Texas Steel had sufficient minimum contacts with the State of Indiana to permit the Courts of the State of Indiana to exercise personal jurisdiction over North Texas Steel in a manner consistent with the Due Process Clause of the Fourteenth Amendment to the

United States Constitution. (Brief of Appellant, pp. 18-30).

> "In this case, when focusing on North Texas Steel's activities in the State of Indiana, it is clear that North Texas Steel did not perform any act by which it purposely availed itself of the privilege of conducting activities within the State of Indiana. North Texas Steel does not do business in Indiana. It has no office, agents, employees, or property in Indiana. It does not advertise or otherwise solicit business in Indiana. It did not create, control, or employ the distribution system that brought the storage racks on which it performed fabrication services to the State of Indiana. North Texas Steel did not design the storage rack system in anticipation of sales in Indiana. In fact, North Texas Steel did not design the storage rack system at all. Instead, the only contact with the State of Indiana is that North Texas Steel was aware that the storage rack system on which it was performing fabrication services for Frazier was to be ultimately delivered to the State of Indiana. On the basis of these facts, the exercise of personal jurisdiction by the Kosciusko Circuit Court over North Texas Steel exceeds the limits of due process." (Brief of Appellant, p. 20).

In affirming the judgment of the trial court denying North Texas Steel's Motion to Dismiss, the Court of Appeals of Indiana, like the trial court, based its determination solely on its finding that the exercise of personal jurisdiction over North Texas Steel was consistent with the requirements of the Due Process Clause of the Fourteenth Amendment.

> "We do find, however, that the trial court was correct in determining that it had specific personal jurisdiction over NTS as RRD's claims arise from or relate to NTS's contact with Indiana. . . . We also find that the exercise of personal jurisdiction over NTS comports with the due process concepts of fair play and substantial justice." *North Texas Steel Company, Inc. v. R.R. Donnelley & Sons Company*, 679 N.E.2d 513, 519 (Ind. App. 1997), A-10-A-11.

North Texas Steel timely filed its Petition for Transfer with the Indiana Supreme Court. In that Petition, North Texas Steel once again specifically raised the issue of whether the exercise of personal jurisdiction over North Texas Steel complied with the Due Process Clause of the Fourteenth Amendment.

> "The opinion contravenes ruling precedent of the United States Supreme Court in *Asahi Metal Industry Ltd. v. Superior Court of California, Solano County*, 480 U.S. 102, 107 S.Ct. 1026, 94 L.Ed. 92 (1987); and *World-Wide Volkswagon Corp. v. Woodson*, 444 U.S. 286, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980), in that it holds that Indiana courts may exercise personal jurisdiction over the appellant as a result of the fabrication work it performed on a good which was to be sold by a third party to an Indiana corporation, where that fabrication work was simply an isolated occurrence and did not arise from the efforts of the appellant to serve, directly or indirectly, the market for its products in other states." (Petition for Transfer, p. 2).

On December 3, 1997, the Indiana Supreme Court denied transfer. (See, A-17-A-18). North Texas Steel now

petitions for a Writ of Certiorari pursuant to 28 U.S.C. §1257(a).

R.R. Donnelley is a corporation organized under the laws of the State of Delaware with its principal place of business in Chicago, Illinois. (Record, p. 116). R.R. Donnelley's primary business is printing and assembling catalogs for retailers such as J.C. Penney, Lands End, Eddie Bauer, and Speigel. (Record, p. 117). R.R. Donnelley operates a printing and binding facility in Warsaw, Indiana. (Record, p. 117).

On or about June 28, 1993, R.R. Donnelley contracted with Associated Material Handling Industries, Inc. (hereinafter "Associated"), to provide a material handling system, including storage racks, sophisticated forklifts, conveyors, and other related equipment for its Warsaw facility. (Record, p. 117). The purchase price for that material handling system was $1,180,000.00. (Record, p. 30). Subsequently, Associated subcontracted the storage rack design and manufacture work to Frazier. (Record, p. 118). Frazier designed the storage racks to be used at the R.R. Donnelley Warsaw facility. (Record, p. 118).

Frazier hired North Texas Steel as a subcontractor for the Donnelley job to perform fabrication services on raw steel supplied by Frazier, using a welding machine supplied by Frazier. (Record, p. 79). Pursuant to its contract with Frazier, North Texas Steel provided fabrication services for certain, but not all, component parts of the storage racks ultimately purchased by R.R. Donnelley. (Record, pp. 313-314). North Texas Steel was not involved in the design of the storage racks purchased by R.R. Donnelley, or any component thereof. (Record, p. 314).

Frazier provided to North Texas Steel all specifications, drawings and welding requirements for the component parts fabricated by North Texas Steel that eventually became part of the storage rack purchased by R.R. Donnelley. (Record, p. 314). In fact, Frazier had a full-time inspector at North Texas Steel's Fort Worth plant where all the fabrication services were performed. (Record, p. 79). Frazier's inspector had the opportunity to inspect and approve North Texas Steel's work prior to shipping. (Record, p. 79).

Frazier supplied the steel on which North Texas Steel performed its fabrication services. (Record, p. 314). Frazier ordered the steel and specified the size, weight, type, grade and amount of steel. (Record, p. 314). Frazier caused the steel to be shipped to North Texas Steel. (Record, p. 314). North Texas Steel was only one of at least two firms which performed fabrication services upon the component parts of the storage rack ultimately purchased by R.R. Donnelley. (Record, p. 314).

Frazier provides instructions to North Texas Steel regarding the shipping of component parts of the storage racks upon which North Texas Steel performs fabrication services for Frazier, including the component parts which ultimately became a part of the R.R. Donnelley storage rack. (Record, pp. 314-315). Frazier directs North Texas Steel when to ship the component parts of the rack and to whom. (Record, p. 315). At Frazier's directions, North Texas Steel delivered the component parts which ultimately became part of the R.R. Donnelley storage rack to a Frazier-approved carrier with shipping terms "f.o.b. Fort Worth". (Record, p. 315). Frazier paid the shipping

costs to have the component parts shipped from Fort Worth, Texas to Indiana. (Record, p. 315).

Prior to its work on the storage rack at issue in this case, North Texas Steel provided fabrication services on numerous occasions for Frazier. (Record, p. 313). North Texas Steel conducts two basic types of fabrication work, structural and rack. (Record, p. 78). Structural work consists of fabrication for large projects such as highways, bridges and steel building construction. (Record, p. 78). At least 90 percent of North Texas Steel's structural work is performed for projects in the State of Texas. (Record, p. 78). Rack work entails fabrication work only. Fabrication consists of the cutting, punching, welding and painting of steel members. (Record, p. 78). All of North Texas Steel's fabrication work is performed solely in its plants in Fort Worth, Texas. (Record, p. 79). North Texas Steel obtains all of its rack work solely through contracts with Frazier. (Record, p. 79).

At the time that North Texas Steel, pursuant to Frazier's design specifications, was performing the fabrication services upon component parts that eventually became part of the R.R. Donnelley storage rack, North Texas Steel was also performing the same type of fabrication services for Frazier on component parts for storage racks Frazier provided for other of its customers. (Record, p. 314). The fabrication services performed by North Texas Steel and the component parts which were eventually incorporated into R.R. Donnelley storage racks were substantially identical to the fabrication services performed by North Texas Steel for Frazier upon component parts of other storage racks which Frazier sells to other Frazier customers. (Record, p. 315).

North Texas Steel did not know the intended use for the storage racks at the time of contracting or completion of its work on the R.R. Donnelley storage rack. (Record, p. 80). North Texas Steel only knew that the racks on which it was performing fabrication services were ultimately going to a distribution center for R.R. Donnelley located in the State of Indiana. (Record, p. 80). The fabrication services performed by North Texas Steel on the component parts which were eventually incorporated into R.R. Donnelley storage racks were substantially identical to the fabrication services performed by North Texas Steel for Frazier upon component parts of other storage racks which Frazier sells to other of its customers. (Record, p. 315). North Texas Steel billed Frazier $56,195.00 for the fabrication services performed upon the steel Frazier caused to be delivered to North Texas Steel that eventually became part of the storage rack purchased by R.R. Donnelley. (Record, p. 314).

North Texas Steel has never negotiated, contracted or done business with R.R. Donnelley. (Record, p. 80). Prior to the assertion of the claim forming the subject in this proceeding, North Texas Steel had never even communicated with R.R. Donnelley, and no agent or employee of North Texas Steel had ever entered Indiana in connection with the storage rack at issue. (Record, p. 80). Negotiations between Frazier and North Texas Steel were minimal. (Record, p. 80). Frazier sent drawings from Long Valley, New Jersey to North Texas Steel in Fort Worth. (Record, p. 80). Frazier knew in advance North Texas Steel's general price structure and that North Texas Steel had the capacity at the time to complete the R.R. Donnelley job. (Record, p. 80). North Texas Steel accepted

Frazier's offer through commencing performance of the contract at its Fort Worth plants. (Record, p. 80). Frazier thereafter sent to North Texas Steel a signed purchase order for the fabricated steel members. (Record, p. 80).

North Texas Steel neither presently maintains, nor has it ever maintained, any offices or facilities in the State of Indiana. North Texas Steel does not have a certificate or license to do business in the State of Indiana and never has. (Record, p. 77). North Texas Steel neither presently, nor has it ever had, any employees or agents in the State of Indiana. (Record, p. 77). North Texas Steel does not presently own, nor has it ever owned, real or personal property in the State of Indiana. (Record, p. 78).

North Texas Steel does not solicit business in the State of Indiana. (Record, p. 78). North Texas Steel does not advertise in any trade journals, magazines, or other publications targeting the State of Indiana, nor does North Texas Steel advertise in any nationally distributed publications. (Record, p. 78). North Texas Steel has never contracted with an Indiana corporation, business or individual to provide a product or perform services in the State of Indiana. (Record, p. 78). Prior to its work on the storage rack at issue, North Texas Steel has provided fabrication services on only three racks which were ultimately shipped by Frazier to the State of Indiana, the most recent of which was in 1987. (Record, p. 78). Other than the storage rack shipped by Frazier to R.R. Donnelley, since 1987 North Texas Steel has not performed fabrication or any other type of work on any product ultimately located in the State of Indiana. (Record, p. 78).

On June 14, 1994, a majority of the storage racks at R.R. Donnelley's Warsaw facility collapsed. (Record, p. 119).

REASONS FOR GRANTING THE PETITION

This appeal once again raises the issue of the applicable limits of the stream of commerce theory of personal jurisdiction, first set forth by this Court in *World-Wide Volkswagon Corp. v. Woodson*, 444 U.S. 286, 100 S.Ct. 559, 62 L.Ed. 490 (1980), and addressed once again in *Asahi Metal Industry Company, Ltd. v. Superior Court of California, Solano County*, 480 U.S. 102, 107 S.Ct. 1026, 94 L.Ed.2d 92 (1987). In *World-Wide Volkswagon*, this Court rejected the argument that jurisdiction is appropriate in any forum where a product which is sold by a defendant may foreseeably cause injury. This Court noted that foreseeability alone has never been a sufficient benchmark for personal jurisdiction under the Due Process Clause. *Id.*, 444 U.S. at 295, 100 S.Ct. at 566, 62 L.Ed.2d at 500. However, this Court went on to state that foreseeability was not wholly irrelevant to the issue of personal jurisdiction.

> "But the foreseeability that is critical to due process analysis is not the mere likelihood that a product will find its way into the forum state. Rather, it is that the defendant's conduct in connection with the forum state are such that he should reasonably anticipate being haled into court there." *Id.*, 444 U.S. at 297, 100 S.Ct. at 567, 62 L.Ed.2d at 501.

This Court further noted that when a corporation purposely avails itself of the privilege of conducting

activities within the forum state, it has clear notice that it is subject to jurisdiction in that state. *Id.*

> "Hence if the sale of a product of a manufacturer or distributor such as Audi or Volkswagon is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve, directly or indirectly, the market for its products in other States, it is not unreasonable to subject it to the suit in one of those States if its allegedly defective merchandise has there been the source of injury to its owner or others. The forum State does not exceed its powers under the due process clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State." *Id.*

This Court once again addressed the "stream of commerce" theory of personal jurisdiction in *Asahi Metal Industry*. While this Court in *Asahi* was unanimous in holding that the exercise of personal jurisdiction over the Japanese third-party defendant under the circumstances of that case would offend "traditional notions of fair play and substantial justice" and thus be in contravention of the Due Process Clause, 480 U.S. at 113, 107 S.Ct. at 1033, the Court was evenly divided as to the requirements for the application of the stream of commerce theory of personal jurisdiction.

The plurality opinion authored by Justice O'Connor noted the divergence of authority arising out of the stream of commerce language set forth in *World-Wide Volkswagon*. Justice O'Connor noted that some courts, like the Supreme Court of California in *Asahi*, held that the

fact that the stream of commerce eventually brought some products into the forum state and the defendant was aware that its products would be sold in the forum state, was sufficient to permit the forum state to exercise jurisdiction over the defendant manufacturer consistent with the requirements of due process. *Id.*, 480 U.S. at 110, 111, 107 S.Ct. at 1031.

By contrast, Justice O'Connor noted, other courts understood the Due Process Clause to require something more than that the defendant was aware of its products entry into the forum state through the stream of commerce in order for the state to exert personal jurisdiction over the defendant. The plurality opinion by Justice O'Connor, joined by three other Justices, found that the latter position to be "consonant with the requirements of due process." *Id.*, 480 U.S. at 112, 107 S.Ct. at 1032.

> "The 'substantial connection' . . . between the defendant and the forum State necessary for a finding of minimum contacts must come about by *an action of the defendant purposefully directed toward the forum State*. . . . The placement of a product into the stream of commerce, without more, is not an act of the defendant purposefully directed toward the forum State. Additional conduct of the defendant may indicate an intent or purpose to serve the market in the forum State, for example, designing the product for the market in the forum State, advertising in the forum State, establishing channels for providing regular advice to customers in the forum State, or marketing the product through a distributor who has agreed to serve as a sales agent in the forum State. But a

> defendant's awareness that the stream of commerce may or will sweep the product into the forum State does not convert the mere act of placing the product into the stream into an act purposefully directed towards the forum state." *Id.* (emphasis original).

By contrast, the opinion of Justice Brennan, also writing on behalf of three other Justices, disagreed with the plurality opinion of Justice O'Connor as to the requirements for personal jurisdiction under the stream of commerce theory. Specifically, the opinion of Justice Brennan rejected the need for showing additional conduct directed toward the forum state before a finding of personal jurisdiction over the defendant to be consistent with due process.

> "The stream of commerce refers not to unpredictable currents or eddies, but to the regular and anticipated flow of products from manufacture to distribution to retail sale. As long as a participant in this process is aware that the final product is being marketed in the forum State, the possibility of a lawsuit there cannot come as a surprise. Nor will the litigation present a burden for which there is no corresponding benefit. A defendant who has placed goods in the stream of commerce benefits economically from the retail sale of the final product in the forum State, and indirectly benefits from the State's laws that regulate and facilitate commercial activity. These benefits accrue regardless of whether that participant directly conducts business in the forum State, or engages in additional conduct directed toward that State." *Id.*, 480 U.S. at 117, 107 S.Ct. at 1034-1035

The decision of this Court in *Asahi* did nothing to rectify the divergence of authority which was noted by Justice O'Connor in the plurality opinion. Subsequent to this Court's decision in *Asahi*, both federal and state courts have continued to differ as to the requirements for the applicability of the stream of commerce theory of personal jurisdiction.

Both the First Circuit and Fourth Circuit have adopted the position taken by Justice O'Connor in the plurality opinion in *Asahi*. *In re Celotex Corp.*, 124 F.3d 619, 629 (4th Cir. 1997); *Lesnick v. Hollingsworth & Vose Co.*, 35 F.3d 939, 946 (4th Cir. 1994); *Rodriguez v. Fullerton Tires Corp.*, 115 F.3d 81, 85 (1st Cir. 1997); *Sawtelle v. Farrell*, 70 F.3d 1381, 1393 (1st Cir. 1995). By contrast, the Fifth Circuit, Seventh Circuit and Eighth Circuit have adopted the position taken by the opinion of Justice Brennan in *Asahi*. *Ruston Gas Turbines, Inc. v. Donaldson Company, Inc.*, 9 F.3d 415, 420 (5th Cir. 1993); *Dehmlow v. Austin Fireworks*, 963 F.2d 941, 947 (7th Cir. 1992); *Barone v. Rich Bros. Interstate Display Fireworks Co.*, 25 F.3d 610, 614 (8th Cir. 1994).

> "Because the Supreme Court's splintered view of minimum contacts in *Asahi* provides no clear guidance on this issue, we continue to gauge the non-resident defendant's contacts with Texas by the stream of commerce standard as described in *World-Wide Volkswagon* and embraced in this circuit." *Ruston, supra, quoting, Irving v. Owens Corning Fiberglass Corp.*, 864 F.3d 383, 386 (5th Cir. 1989).

While these circuits have taken sides in the stream of commerce debate, other circuits have simply taken the

position that, due to the unsettled nature of this Court's rulings with regard to the stream of commerce theory, they should avoid taking a position and attempt to decide each case on the facts and on the basis of prior personal jurisdiction case law. *Omeluk v. Langsten Slip and Batbyggeri A/S*, 52 F.3d 267, 271 (9th Cir. 1995); *Renner v. Lanard Toys Ltd.*, 33 F.3d 277, 282 (3rd Cir. 1994); *Viam Corp. v. Iowa Export-Import Trading Co.*, 84 F.3d 424, 427-428 (Fed. Cir. 1996); *Vermeulen v. Renault, U.S.A., Inc.*, 985 F.2d 1534, 1548 (11th Cir. 1993).

> "This court has not revisited the 'stream of commerce' theory since the Supreme Court's opinion in *Asahi*. Although the 4-4-1 vote of the Supreme Court makes it difficult to even attempt to promulgate the last word on the 'stream of commerce' theory, certain guidelines have emerged. It is clear, for example, from *Asahi* and its precursors that there must have been some 'purposeful availment' by the defendant of the forum state. . . . Because the distinction between Justice O'Connor's view and Justice Stevens may be a subtle one, requiring another Supreme Court decision to flesh out the lines between them, most of the circuits to have addressed the 'stream of commerce' theory since *Asahi* have chosen to avoid taking a position on the current status, attempting when possible to decide the case on the basis of the facts on record." *Renner*, at 282.

The decisions of state courts concerning the stream of commerce theory have been just as disparate. Several state courts have adopted the opinion of Justice O'Connor in *Asahi*, holding that the mere placement of a product in the stream of commerce with knowledge that the

product may or will enter the forum state is not sufficient to impose personal jurisdiction consistent with the due process clause. *Sorrells v. R&R Custom Coach Works, Inc.*, 636 So.2d 668, 674 (Miss. 1994); *Halderman v. Sanderson Forklifts Company, Ltd.*, 818 S.W.2d 270, 274 (Ken. App. 1991); *Johnson v. Peacock Lumber Company, Inc.*, 770 P.2d 690, 714 (Ore. App. 1989). Conversely, other state courts have adopted the position taken by the opinion of Justice Brennan in *Asahi. Continental Research Corp. v. Reeves*, 204 Ga. App. 120, 419 S.E.2d 48, 53 (1992); *Cox v. Hozelock, Ltd.*, 105 N.C. App. 52, 411 S.E.2d 640, 644 (1992); *Dillaplain v. Lite Industries, Inc.*, 788 S.W.2d 530, 535 (Mo. App. 1990).

> "Further, we cannot agree that the impact of *World-Wide* has been sufficiently lessened due to the recent Supreme Court decision in *Asahi Metal Industry v. Superior Court of California*, 480 U.S. 102, 107 S.Ct. 1026, 94 L.Ed.2d 92 (1987). . . . The Court was evenly split, however, as to the ramifications of *World-Wide* and whether intentionally placing a product in the stream of commerce, without more, provided a sufficient basis for jurisdiction over a foreign defendant.
>
> Subsequently, we hold *World-Wide* still to be the controlling point of authority on this question of when a forum state may assert a personal jurisdiction over a foreign defendant. '*Asahi* does not overrule previous cases that follow the stream of commerce theory, . . . ' In conformity with the trend of North Carolina case law, we uphold the stream of commerce doctrine and find it consistent with the federal Due Process Clause. We hold that the sole act of a manufacturer's intentional injection of his product into the stream of

> commerce provides sufficient grounds for a forum state's exercise of personal jurisdiction over the foreign manufacturer defendant." *Cox, supra.*

Finally, as with the federal courts, numerous state courts have simply been unable to join in on the stream of commerce debate as the result of the confusion created by this Court's opinion in *Asahi*. *CMMC v. Salinas*, 929 S.W.2d 435 (Tex. 1996); *A. Uberti and C. v. Leonardo*, 892 P.2d 1354, 1359 (Ariz. 1995); *Wiles v. Morita Iron Works Co., Ltd.*, 530 N.E.2d 1382, 1389 (Ill. 1988).

> "As can be seen from this exposition, it is not possible to determine from *Asahi* whether the broad or the narrow version of the stream of commerce theory is correct. We need not decide this issue, however, for we believe that even under the broader version of the stream of commerce theory, there were no minimum contacts between defendant Morita and the State of Illinois." *Id.*

As the foregoing makes clear, the state of due process analysis with regard to the stream of commerce theory of personal jurisdiction can be described, at best, as greatly unsettled. Not only have both federal and state courts reached opposite conclusions on the issue of the requirements of due process with regard to the stream of commerce theory, but many courts have refused to address the issue at all, due to the lack of any real guidance by this Court. For that reason, this Court should grant the Petition for Writ of Certiorari in this case to resolve the issue of the proper interpretation of the stream of commerce theory of personal jurisdiction under the Due Process Clause of the Fourteenth Amendment.

This case is clearly an appropriate vehicle for that determination. While North Texas Steel contends that the exercise of personal jurisdiction by the Indiana trial court did not comport with the requirements of due process under either Justice O'Connor or Justice Brennan's view of the stream of commerce theory, it is clear that if Justice O'Connor's opinion in *Asahi* is the correct interpretation of the stream of commerce theory, then the Indiana Courts erred in exercising personal jurisdiction over North Texas Steel in this matter. While neither did so expressly, it is apparent that both the trial court and Court of Appeals of Indiana held that jurisdiction was appropriate in this case based on Justice Brennan's view of the stream of commerce theory, i.e., that North Texas Steel placed the storage rack system on which it performed fabrication services into the stream of commerce, knowing that it was destined for the State of Indiana and, accordingly, was subject to personal jurisdiction in the State of Indiana.[1] However, under the approach of Justice O'Connor in *Asahi*, it is readily apparent that the exercise

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[1] North Texas Steel contends that both the trial court and Court of Appeals erred in finding that North Texas Steel had sufficient minimum contacts even under Justice Brennan's view of the stream of commerce theory. Even Justice Brennan would not allow jurisdiction absent a "regular and anticipated flow of products from manufacture to distribution to retail sale." *Asahi*, 480 U.S. at 117, 107 S.Ct. at 1034. In this case, the undisputed evidence in the Record clearly establishes that the sale of the product on which North Texas Steel performed fabrication services for Frazier to Donnelley in Indiana was an isolated occurrence and not part of a regular and anticipated flow of products manufactured by North Texas Steel for distribution and retail sale.

of jurisdiction over North Texas Steel in this case would not comport with due process. North Texas Steel had no contacts with Indiana apart from the fact that it performed fabrication services on a good which it knew was ultimately destined for the State of Indiana. There is no other conduct of North Texas Steel which indicates an intent or purpose to serve the market in the State of Indiana. North Texas Steel did not design the storage rack system which was sold to R.R. Donnelley. That design was done by Frazier. North Texas Steel did not advertise in the State of Indiana and did not establish channels for providing regular advice to customers in Indiana, nor did North Texas Steel market its products through a distributor who agreed to serve as a sales agent in the State of Indiana. Accordingly, if Justice O'Connor's approach to the stream of commerce theory is correct, due process precludes personal jurisdiction by a Court of the State of Indiana over North Texas Steel in this case.

It has been over ten years since this Court issued its decision in *Asahi*. Both before and after that decision, confusion has reigned in the state and federal courts concerning the limits for personal jurisdiction imposed by the Due Process Clause under the stream of commerce theory. The time has come for this Court to end the confusion and determine the appropriate parameters for the exercise of personal jurisdiction over non-resident defendants. The facts of this case make such a determination appropriate.

CONCLUSION

Under this Court's due process jurisprudence, a non-resident defendant is not subject to personal jurisdiction in a forum state unless it has engaged in some act by which the defendant "purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protection of its laws." *Hanson v. Denckla*, 357 U.S. 235, 253, 78 S.Ct. 1228, 1240, 2 L.Ed.2d 1283, 1298 (1958). The "purposeful availment" requirement ensures that a defendant will not be haled into a jurisdiction solely on the basis of random, fortuitous or attenuated contacts or the unilateral activity of another party or a third person who claims a relationship with them. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475, 105 S.Ct. 2174, 2183, 85 L.Ed.2d 528, 542 (1985). In this case, North Texas Steel has been haled into the Courts of the State of Indiana on the basis of random, fortuitous, and attenuated contacts and as a result of the unilateral activity of Frazier, with whom North Texas Steel contracted to perform fabrication work. For that reason, the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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IN THE
COURT OF APPEALS OF INDIANA

NORTH TEXAS STEEL COMPANY, INC., Appellant-Defendant,	)	No. 43A04-9608-CV-325
vs.	)	
R.R. DONNELLEY & SONS COMPANY, Appellee-Plaintiff.	)	

APPEAL FROM THE KOSCIUSKO CIRCUIT COURT
The Honorable Douglas B. Morton, Special Judge
Cause No. 43C01-9512-CP-999

Filed April 29, 1997

OPINION – FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Defendant-Appellant North Texas Steel Company, Inc. (NTS) appeals the trial court's denial of its motion to dismiss for lack of personal jurisdiction and its motion for change of venue in this action initiated by Plaintiff-Appellee R.R. Donnelley & Sons Company (RRD). In response, RRD challenges the jurisdiction of this court over the subject matter of NTS's appeal.

We affirm.

ISSUES

NTS raises two issues for review, which we restate as:

1. Whether the trial court erred in determining that it had personal jurisdiction over NTS.

2. Whether the trial court erred in denying NTS's motion for change of venue.

RRD raises one issue for our review, which we restate as:

1. Whether this court has appellate jurisdiction over the issues raised.

FACTS AND PROCEDURAL HISTORY

RRD's primary business is printing and assembling catalogs for retailers. At its facility in Warsaw, Indiana, catalogs are printed and assembled in portions, called "signatures." After it prints a given amount of signatures, RRD stacks the group together, binds it with bands, stacks the bound materials on pallets, and binds the

group with shrink-wrap plastic. RRD stores the pallets of signatures for a short period of time before further processing.

On or about June 28, 1993, RRD entered into a contract with Associated Material Handling Industries, Inc. (Associated), an Illinois corporation with a principal place of business in the same state, requiring Associated to provide a material handling system, including storage racks, sophisticated forklifts, conveyors, and other related equipment for RRD's facility in Warsaw, Indiana. Associated subcontracted the storage rack design and manufacture to Frazier Industrial Company (Frazier), a New Jersey corporation with a principal place of business in Long Valley, New Jersey. Frazier entered into a contract with NTS, a Texas corporation with a principal place of business in Fort Worth, which required NTS to manufacture or fabricate the rack system according to Frazier's design. After it completed the manufacturing process, NTS shipped the rack system to RRD's Warsaw facility through various carriers. Frazier paid the shipping costs.

The storage racks were installed and ready for use on March 21, 1994. On June 14, 1994, a majority of the storage racks collapsed. The pallets stored on the racks fell to the floor and broke, spilling the signatures. The collapse also caused the fire sprinkler system to burst and soak piles of signatures.

On December 18, 1995, RRD filed a complaint against Associated, Frazier, and NTS for damages caused by the collapse of the storage rack. The complaint included product liability, breach of contract, and negligence claims against the defendants.

After giving notice of depositions to two of RRD's expert witnesses, NTS filed a motion to dismiss the complaint on the basis of lack of personal jurisdiction. NTS also filed a motion for change of venue on the theory that it could not receive a fair trial in Kosciusko County. After hearing evidence and oral argument, the trial court denied both of NTS's motions. In its order on the motion to dismiss, the trial court stated:

> 3. The Court believes that, in weighing the contacts of [NTS] with the State of Indiana, its business practice has fairly submitted it to the jurisdiction of the Courts of Indiana. All of the evidence indicates that [NTS] performed all of its services within the State of Texas but that in so doing, it was specially preparing an item which it knew to be solely for shipment to [RRD] at Warsaw, IN. Because the item was prepared with the knowledge of its specific purpose for shipment and usage within the State of Indiana, the Court believes it proper to consider issues of the product's alleged failure in Indiana courts.
>
> In comparing this special purpose manufacturing with production of a product of a general nature which could be sold on the open market, could be transported to virtually any site, and allegedly cause an injury in a distant jurisdiction, the Court deems the differences sufficient to establish in personam jurisdiction in the first case and to observe the lack thereof in the second.

(R. 468-69).

In its order denying NTS's motion for change of venue, the trial court acknowledged that RRD was an

important institution in Kosciusko County. However, the court determined that this fact did not prevent NTS from receiving a fair trial in the county.

Upon NTS's motion, the trial court certified its ruling for interlocutory appeal. We accept jurisdiction.

DISCUSSION AND DECISION

I. THIS COURT'S EXERCISE OF APPELLATE JURISDICTION

RRD contends that this court lacks jurisdiction to review the trial court's denial of NTS's motions to dismiss for lack of personal jurisdiction and for change of venue. RRD argues that Article 7, § 4 of the Indiana Constitution[1], Ind.Appellate Rule 4(A)(5)[2], and Ind.Original Action Rule 1[3], provide that our supreme court has

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[1] Article 7, § 4 provides that "[t]he Supreme Court shall have no original jurisdiction except in . . . supervision of the exercise of jurisdiction by the other courts of the State; and issuance of writs necessary or appropriate in aid of its jurisdiction."

[2] App.R. 4(A)(5) provides that our supreme court shall have exclusive jurisdiction of "[s]upervision of the exercise of jurisdiction by the other courts of the State, including the issuance of writs of mandate and prohibition."

[3] Orig.Act.R. 1(A) provides that our supreme court has "exclusive, original jurisdiction to supervise the exercise of jurisdiction of all inferior state courts, including the Court of Appeals by virtue of Indiana Constitution, Article 7, section 4, and Ind.Appellate Rule 4(A)(5)." Orig.Act.R. 1(B) provides that Original Action rules apply to "[a]ctions commenced in the Supreme Court pursuant to the authority in section (A) above for writs of mandamus or prohibition against inferior state

exclusive jurisdiction over appeals concerning trial court jurisdiction and venue. Succinctly stated, RRD contends that issues raised in the trial court concerning lack of personal jurisdiction and change of venue may only be raised in an original action before our supreme court.

The jurisdiction of this court is set forth by our constitution in Article 7, § 6, which provides that we "shall exercise appellate jurisdiction under such terms and conditions as the Supreme Court shall specify by rules. . . . " In App.R. 4(b)(6), our supreme court specified that appeals from interlocutory orders are appropriate where the trial court certifies its orders and this court accepts jurisdiction. It is on this authority that this court has exercised jurisdiction over numerous cases involving the issue of a trial court's determination of personal jurisdiction and venue in the past. It is also on this authority that we exercise jurisdiction in this case.

The decision to grant or deny a motion to dismiss based on lack of personal jurisdiction or venue lies within the sound discretion of the trial court. *See Freemond v. Somma*, 611 N.E.2d 684, 687 (Ind. Ct. App. 1993), *reh'g denied, trans. denied* (personal jurisdiction); *Bellmore v. State*, 602 N.E.2d 111, 116 (Ind. 1992), *reh'g denied* (change of venue). Any error arising from an abuse of discretion must be raised in an appeal, not in an original action. *State ex rel. Robinson v. Grant Superior Court No. 1*, 471 N.E.2d 302, 303 (Ind. 1984). Therefore, the question of

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courts and the judge or judges thereof and concerned solely with the question of jurisdiction. . . . "

personal jurisdiction is one for appeal, not for an original action.

RRD argues that in allowing this court to adjudicate appeals from determinations of personal jurisdiction, the supreme court improperly delegated its constitutional responsibility.[4] *See Carpenter v. State*, 360 N.E.2d 839, 842 (Ind. 1977) (holding that Article 7, § 4 merely authorizes the supreme court to supervise the exercise of jurisdiction, not to create it.). RRD's reading of the constitution is too restrictive. The Supreme Court's original jurisdiction to provide "supervision of the exercise of jurisdiction by the other courts of the State" is for the purpose of ensuring that inferior courts act within the nondiscretionary jurisdiction granted by the Constitution and/or applicable statutes. The grant of original jurisdiction is not a mandate that issues pertaining to the trial court's discretion, such as a determination of personal jurisdiction over a defendant, may only be challenged by original action.

II. THE TRIAL COURT'S EXERCISE OF JURISDICTION OVER NTS

The jurisdiction of an Indiana court over a nonresident entity is predicated on Ind. Trial Rule 4.4(A)(1), which grants jurisdiction over an entity doing any business in Indiana. The purpose of the trial rule is to extend

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[4] RRD cites *State ex rel. Hovey v. Noble*, 118 Ind. 350, 21 N.E. 244 (1888), in support of its argument. This case actually stands for the proposition that the judiciary cannot delegate its responsibilities to another branch of government. 21 N.E.2d at 249.

jurisdiction to the boundaries permitted by the due process clause of the fourteenth amendment to the federal constitution. *Fetner v. Boyd*, 563 N.E.2d 1334, 1336 (Ind. Ct. App. 1990), *reh'g denied, trans. denied*. The due process clause requires that the defendant have "minimum contacts" with the forum state so that the assertion of jurisdiction "does not offend the 'traditional notions of fair play and substantial justice.' " *International Shoe Co. v. Washington*, 66 S.Ct. 154, 158 (1945) (citations omitted). Whether minimum contacts exist in a particular factual setting must be determined on a case-by-case basis, and there are no hard and fast rules regarding the existence of minimum contacts. *Kulko v. Superior Court of California*, 98 S.Ct. 1690, 1697 (1978). The due process analysis examines whether "the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there." *Burger King Corp. v. Rudzewicz*, 105 S.Ct. 2174, 2183 (1985) (quoting *World-Wide Volkswagen Corp. v. Woodson*, 100 S.Ct. 559, 567 (1980)).

There are two different types of due process analyses in personal jurisdiction cases: general and specific. *Curtis Management Group v. Academy of Motion Picture Arts and Sciences*, 717 F.Supp. 1362, 1366 (S.D. Ind. 1989). General jurisdiction allows a court to entertain a suit against a defendant "because of the defendant's general presence in the forum state regardless of whether that presence is related to the litigation at hand." *Id.* (citing *Helicopteros Nacionales de Columbia, S.A. v. Hall*, 104 S.Ct. 1868 (1984)). Courts are more demanding when jurisdiction is sustained only on a basis of general jurisdiction. In such a

case, the defendant must have "continuous and systematic general business contacts" in the forum state. *Hexacomb Corp. v. Damage Prevention Products Corp.*, 905 F.Supp. 557, 561 (N.D. Ind. 1995) (quoting *Helicopteros*, 104 S.Ct. at 1873)). Specific jurisdiction, on the other hand, "turns on an assessment of the 'relationship among the defendant, the forum, and the litigation.' " *Id.* (quoting *Shaffer v. Heitner*, 97 S.Ct. 2569, 2579 (1977)). Specific jurisdiction is utilized "where the defendant lacks a general presence in the state and where the only possible basis for haling the defendant into court [arises from or is related to] the contacts giving rise to the litigation." *Curtis*, 717 F.Supp. at 1366. The defendant must have purposely availed himself of the "privilege of conducting activities" in the forum state. *Burger King*, 105 S.Ct. at 2183. This insures that jurisdiction over the defendant will not be based on "random, fortuitous, or attenuated contacts" with the forum state. *Id.* When a cause of action arises from or is related to the defendant's contacts with the forum, less is required to support jurisdiction than when the cause of action is unrelated to those contacts. *Mullen v. Cogdell*, 643 N.E.2d 390, 397 (Ind. Ct. App. 1994), *reh'g denied, trans. denied.* Thus, even "a single act" can support a finding of specific jurisdiction, as long as that act creates a "substantial connection" with the forum state. *Burger King*, 105 S.Ct. at 2184, n. 18 (Citing *McGee v. International Life Insurance Co.*, 78 S.Ct. 199, 201 (1957)).

In Indiana, jurisdiction is presumed and need not be alleged. *Fidelity Financial Services, Inc. v. West*, 640 N.E.2d 394, 396 (Ind. Ct. App. 1994). A party challenging jurisdiction must establish lack of jurisdiction by a preponderance of the evidence unless lack of jurisdiction is

apparent on the face of the complaint. *Id.* It is within the trial court's discretion to find the jurisdictional facts; once the facts are decided, the issue of jurisdiction is a question of law. *Id.*

In the present case, we do not find that general jurisdiction exists. There is no evidence to indicate that NTS has a continuous and systematic presence in Indiana through direct advertising or direct solicitation. Furthermore, there is no evidence to indicate that NTS has an office, an agent, employees, or property in the state.

We do find, however, that the trial court was correct in determining that it had specific personal jurisdiction over NTS as RRD's claims arise from or relate to NTS's contact with Indiana.[5] NTS specifically manufactured the rack system for a corporation located in Indiana and then shipped that system to Indiana. The acts of manufacturing and shipping were done with the knowledge that the system was for use by RRD in Indiana. The evidence does not indicate that NTS was a "local" company which "happened" to expand its business into Indiana. Instead, the evidence indicates NTS had a twelve year relationship with Frazier, a New Jersey company. Pursuant to this relationship, Frazier provided NTS with customers for rack systems, including four customers in Indiana. NTS, through its relationship with Frazier, purposely availed itself of the privilege of conducting business in Indiana, and it cannot complain that jurisdiction is being asserted

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[5] We note that RRD also raises the issues of transient jurisdiction and estoppel as relevant to an affirmance of the trial court's exercise of personal jurisdiction over NTS. These issues are rendered moot by our determination here.

by an Indiana court upon the basis of a "random, fortuitous, or attenuated" contact with the state.

We also find that the exercise of personal jurisdiction over NTS comports with the due process concepts of fair play and substantial justice. The factors which form consideration of the fairness of the exercise of personal jurisdiction are (1) the burden on the defendant; (2) the interests of the forum State; (3) the plaintiff's interest in obtaining relief; (4) the interstate judicial system's interest in obtaining the most efficient resolution of the controversy; and (5) the shared interest of individual States in furthering fundamental substantive social policies. *Asahi Metal Industry Co. v. Superior Court of California*, 107 S.Ct. 1026, 1033 (1987).

The burden that NTS faces in adjudicating its case in Indiana is understandably heavier than the burden of defending against a suit filed in Texas. However, this factor alone is not sufficient to defeat the existence of jurisdiction. *Hexacomb*, 905 F.Supp. at 563. Furthermore, the burden is offset by the combined interests of (1) RRD in adjudicating in the forum where the damage allegedly occurred and where all the defendants are subject to jurisdiction; (2) Indiana in the application of its product liability law and in obtaining relief for one of its citizens; and (3) the interstate judicial system in the resolution, in a single action, of a controversy involving parties from four states.

NTS places great reliance on *CMMC v. Salinas*, 929 S.W.2d 435 (Tex. 1996), and similar cases, for the proposition that "isolated" contacts with the forum state do not warrant an exercise of personal jurisdiction. In *CMMC*, a

small Texas winery ordered a winepress from an independent distributor. The distributor in turn ordered the winepress from a French manufacturer, which wired the press for use in the United States and then shipped the press to Texas. An injury occurred in Texas while a winery employee was cleaning the press, and the injured employee brought a products liability action against CMMC in Texas. The issue of personal jurisdiction eventually was examined by the Texas Supreme Court, which framed the issue as "whether the Fourteenth Amendment permits a state court to take personal jurisdiction over a foreign manufacturer merely because it knew its allegedly defective product would be shipped to that state." *Id.* at 436. The court ultimately held that "CMMC's mere knowledge that its winepress was to be sold and used in Texas and its wiring the machine for use in the United States were not sufficient to subject CMMC to the jurisdiction of Texas courts." *Id.* at 439.

The distinguishing factor between the facts in *CMMC* and the facts in the present case was noted by the trial court in this case. Pursuant to its contract with Frazier, NTS manufactured a system for RRD and then shipped the system to Indiana for RRD's use. This specific contact exceeded CCMC's [sic] shipping of a generic product to Texas.

III. THE TRIAL COURT'S DENIAL OF NTS'S CHANGE OF VENUE MOTION

NTS contends that the trial court erred in denying its motion for change of venue. The motion was filed pursuant to Ind. Trial Rule 76(A), which mandates a change

of venue "upon a showing that the county where suit is pending is a party or that the party seeking the change will be unlikely to receive a fair trial on account of local prejudice or bias regarding a party or the claim or defense presented by a party."

There are two bases for NTS's motion: (1) it cannot receive a fair trial against RRD in Kosciusko County because RRD is well respected in the county; and (2) it cannot receive a fair trial because county citizens would believe that denying RRD's claim for $12 million would have an adverse impact on the county. In the hearing on the motion, NTS put on evidence indicating that RRD: (1) ranks as the second largest employer in Kosciusko County; (2) provides more than $54 million annually to the economy of Kosciusko County; (3) actively engages in charitable interests in Kosciusko County; and (4) enjoys generally positive coverage by the primary newspaper in the county. In opposition to the evidence submitted by NTS, RRD put on evidence establishing that it has been criticized by the citizens of Kosciusko County for various reasons.

The trial court denied the motion from the bench. It subsequently issued a "Memorandum Upon Denial Of Change Of Venue Motion," which delineated the reasons for the denial. In the memorandum, the trial court noted that RRD enjoys a good reputation in Kosciusko County and that most, but not all, publicity is favorable to RRD in the county. The court also noted that the object of T.R. 76(A) is not "to find a location where no one is familiar with any participants or any of the issues." (R. 471). The court further noted that RRD's reputation neither created

prejudice toward NTS nor influenced citizens of the county to forego their duty of impartiality as jurors.

There is no Indiana case law which examines the issues raised by NTS's motion. NTS cites cases from other states which uphold a trial court's grant of a motion[6], while RRD cites cases which uphold a trial court's denial of a motion[7]. Two conclusions can be drawn from these cases: (1) the trial court has much discretion in making its

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[6] *See Haugo v. Haaland*, 349 N.W.2d 25, 28-29 (N.D. 1984) (holding that a trial court did not abuse its discretion in granting a motion to change venue in a case based on Dram Shop statutes where (1) the defendant bar was organized as a nonprofit organization to support community interests, primarily a community hospital; (2) the county had a small population; and (3) community leaders had commended a local judge for his alleged leniency on traffic offenders); *Altheiser v. Richmondville Creamery Co.*, 13 A.D. 162, 215 N.Y.S.2d 122 (1961) (holding that a trial court did not abuse its discretion in granting a motion to change venue in a case filed by dairy farmers and milk producers where the individuals interested in the outcome of litigation constituted a large portion of eligible jurors in the county).

[7] *See Braswell v. Money*, 344 So.2d 767 (Ala. 1977) (holding that a trial court did not abuse its discretion in denying a motion for change of venue in an action involving the county's largest employer where there was no evidence that the trial had created widespread interest and there was no evidence that opinions had been formed by county residents); *South Carolina Electric and Gas Co. v. Aetna Insurance Co.*, 235 S.C. 147, 110 S.E.2d 165 (1959) (holding that a trial court did not abuse its discretion in denying a motion for change of venue merely because one party had a good reputation in the county); *Bennett v. Jackson*, 172 S.W.2d 395 (Tx. Ct. App. 1943), *reh'g denied* (holding that a trial court did not abuse its discretion in denying a motion for change of venue where the movant failed to show bias).

fact-sensitive ruling on a motion to change venue; and (2) a party should not be penalized for its good reputation.[8]

A party seeking to change venue has the burden to prove the existence of local prejudice or bias which prevents it from receiving a fair trial. T.R. 76(A). We will reverse a trial court's ruling on a motion to change venue only upon a showing of abuse of discretion by the trial court. T.R. 76(A); *Bradley v. State*, 649 N.E.2d 100, 108 (Ind. 1995), *reh'g denied*. An abuse of discretion occurs only when the trial court arrives at a conclusion that is clearly against the logic and effect of the facts and circumstances before the court. *Shanklin v. Shireman*, 659 N.E.2d 640, 642 (Ind. Ct. App. 1995).

In the present case, NTS showed, and the trial court accepted the fact, that RRD has a good reputation and strong presence in Kosciusko County. NTS then tried to show that it must be inferred from RRD's reputation and presence that citizens of Kosciusko County would be prejudiced against NTS and biased in favor of RRD in an action involving a large sum of money. Although the suggested inference may be drawn from the evidence, we do not find that it must be drawn. Therefore, we cannot say that the trial court abused its discretion in not drawing the inference urged upon it by NTS.[9]

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[8] *See Braswell*, 344 S.W.2d at 770; *Aetna*, 110 S.E.2d at 168; *Bennett*, 172 S.W.2d at 398.

[9] We note that the trial court wisely stated that it would entertain a second motion for change of venue upon an indication of prejudice or bias during voir dire.

CONCLUSION

This court has jurisdiction over NTS's appeal. In exercising our jurisdiction, we hold that the trial court has personal jurisdiction over NTS. We further hold that the trial court did not abuse its discretion in denying NTS's motion for change of venue.

Affirmed.

DARDEN, J., and BAKER, J., concur.

STATE OF INDIANA

[SEAL]

217 STATE HOUSE
INDIANAPOLIS, IN 46204

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Cause Number
43A04-9608-CV-00325
Lower Court Number:
43C019512CP999

LARRY BARNARD

1400 ONE SUMMIT SQUARE
FORT WAYNE, IN 46802
NORTH TEXAS STEEL
CO., INC. -V- R.R.
DONNELLEY & SONS CO.

You are hereby notified that the SUPREME COURT has on this day 12/03/97

THIS MATTER COMES BEFORE THE INDIANA SUPREME COURT ON A PETITION TO TRANSFER FROM A DECISION OF THE COURT OF APPEALS, PURSUANT TO INDIANA APPELLATE RULE 11(B). THE COURT HAS REVIEWED THE DECISION OF THE COURT OF APPEALS, THE RECORD OF PROCEEDINGS, THE BRIEFS WHICH WERE FILED IN THE COURT OF APPEALS, AND THE MATERIALS WHICH WERE SUBMITTED IN CONNECTION WITH THE

REQUEST TO TRANSFER JURISDICTION. EACH MEMBER OF THE COURT HAS VOTED ON THE CASE. EACH MEMBER OF THE COURT HAS HAD THE OPPORTUNITY TO VOICE THAT JUSTICES VIEWS ON THE APPEAL IN CONFERENCE WITH THE OTHER JUSTICES.

BEING DULY ADVISED, THE COURT NOW DENIES THE APPELLANT'S PETITION TO TRANSFER.

RANDALL T. SHEPARD, CHIEF JUSTICE

ALL JUSTICES CONCUR. KM

WITNESS my name and the seal of said Court,
this 3RD day of DECEMBER, 1997

/s/ H. John Theron
Clerk Supreme Court,
Court of Appeals and
Tax Court

STATE OF INDIANA)
) SS:
KOSCIUSKO COUNTY)

IN THE KOSCIUSKO CIRCUIT COURT

1996 TERM

R.R. DONNELLEY & SONS CO.

VS

ASSOCIATED MATERIAL HANDLING, ET AL

CAUSE NO. 43C01-9512-CP-999

(Filed May 10, 1996)

ORDER

This cause is before the Court upon the Motion to Dismiss submitted by defendant North Texas Steel Company, Inc. and heard in open court on the 26th day of April, 1996. Now the Court being advised, hereby directs as follows:

1. The Motion to Dismiss is based upon the failure of in personam jurisdiction over the defendant North Texas Steel.

2. The Motion to Dismiss is now denied.

3. The Court believes that, in weighing the contacts of North Texas Steel with the State of Indiana, its business practice has fairly submitted it to the jurisdiction of the Courts of Indiana. All of the evidence indicates that North Texas Steel performed all of its services within the State of Texas but that in so doing, it was specially preparing an item which it knew to be solely for shipment to R.R. Donnelley at Warsaw, IN. Because the item

was prepared with knowledge of its specific purpose for shipment to and usage within the State of Indiana, the Court believes it proper to consider issues of the product's alleged failure in Indiana courts.

In comparing this special purpose manufacturing with production of a product of a general nature which could be sold on the open market, could be transported to virtually any site, and allegedly cause an injury in a distant jurisdiction, the Court deems the differences sufficient to establish in personam jurisdiction in the first case and to observe the lack thereof in the second.

SO ORDERED this 10th day of May, 1996.

/s/ Douglas B. Morton
Douglas B. Morton,
Special Judge
Kosciusko Circuit Court